Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 03/26/01?
   b. The request was received on 02/26/02.

II. EXHIBITS

1. Requestor, Exhibit 1:

   a. TWCC 60 and Letter Requesting Dispute Resolution dated 03/11/01
   b. HCFA's
   c. EOB
   d. Extended list of reimbursements from other carriers
   e. Medical Records
   f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent, Exhibit 2:

   a. TWCC 60 and Response to a Request for Dispute Resolution dated 04/23/02
   b. HCFA's
   c. Audit summaries/EOB
   d. Medical Records
   e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 04/09/02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 04/12/02. The response from the insurance carrier was received in the Division on 04/23/02. Based on 133.307 (i) the insurance carrier's response is timely.

4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:

   a. "The Carrier has unfairly reduced our bill when other workers' compensation carriers have established that our charges are fair and reasonable because thy are paying 85%-100% of our billed charges, and group carriers are allowing 100% of our billed charges. Enclosed are examples of bills for the same/similar type of treatment of other patients and their insurance companies interpretation of fair and reasonable as shown by the amounts paid." The provider is seeking additional reimbursement in the amount of $6,309.30 for date of service 03/26/01.

2. Respondent:

   a. THE CARRIER, IN DETERMINING WHAT CONSTITUTES A 'FAIR AND REASONABLE' DID CONSIDER THE MEDICARE, PPO AND HMO PAYMENTS, AND REVIEWED THE COMMISSION'S OWN GUIDELINES FOR ACUTE CARE. ACUTE GUIDELINES STATE THAT $1118.00 IS A VALID REIMBURSEMENT FOR A FULL DAY OF INPATIENT CARE, OR APPROXIMATELY 24 HOURS. BY DEFINITION, OUTPATIENT OR AMBULATORY SURGICAL SERVICES ARE THOSE THAT REQUIRE LESS THAN 90 MINUTES ANESTHESIA TIME AND LESS THAT FOUR HOURS OF RECOVERY. THIS MEANS THE PATIENT RECEIVES CARE FROM THE FACILITY FOR 1/4TH OF THE TIME OF BEING IN AN INPATIENT SETTING FOR A FULL DAY, AND THE FACILITY IS PAID AT THE EQUIVALENT OF A ONE DAY INPATIENT STAY. THE ACUTE CARE FEE GUIDELINES WERE USED AS A CONSIDERATION IN DETERMINING REIMBURSEMENT-HOWEVER, THIS DOES NOT MEAN THAT INPATIENT GUIDELINES WERE APPLIED TO THIS SERVICE. THE CARRIER HAS CONSISTENTLY APPLIED THIS REIMBURSEMENT RATIONALE FOR ALL A.S.C. SERVICES PROVIDED IN 2001."

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 03/26/01.

2. The provider billed $7,427.30 for date of service 03/26/01.

3. The carrier paid $1,118.00 for date of service 03/26/01.

4. The amount in dispute is $6,309.30 for date of service 03/26/01.

5. The carrier denies additional reimbursement on the submitted EOB as M-"IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE."

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. Commission Rule 134.401 (a) (4) states ASC(s) "…shall be reimbursed at a fair and reasonable rate…"

Texas Labor Code Section 413.011 (d) states, "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

The Medical Fee Guidelines General Instructions (VI) discuss that if a MAR value has not been established for a CPT code, reimbursement shall be, "…at the fair and reasonable rate."

The provider submitted additional reimbursement data (EOBs from various carriers) in an attempt to demonstrate payments of fair and reasonable documentation for treatment of an injured individual of an equivalent standard of living in their geographical area. In light of recent SOAH decisions, showing what other carriers have paid an ASC is not evidence of effective medical cost control and is not evidence of amounts paid on behalf of managed care patients of ASC's or on behalf of other non-workers' compensation patients with an equivalent standard of living. The provider's documentation failed to meet the criteria of 413.011 (d).

Because there is no current fee guideline for ASC(s), the health care provider has the burden to prove that the fees paid by the carrier were not fair and reasonable. The provider submitted EOB(s) from other carriers, but the provider failed to meet the criteria of 413.011 (d). Therefore, no reimbursement is recommended.

The above Findings and Decision are hereby issued this 30th day of May 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division

MB/mb